

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection

Office of Insurance

Division of Health Insurance Policy and Managed Care

(Emergency Amendment)

806 KAR 17:545E. ICARE Program employer eligibility, application process, and requirements.

RELATES TO: 2006 Ky. Acts ch. 252, Part XXIII, secs.1-8, 13, 22

STATUTORY AUTHORITY: KRS 304.2-110(1), 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and 1(3), 2(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and [4](3) require the office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program application" means the ICARE Program application, ICARE-APP-1, with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300% of the federal poverty level or below, which may include:

1. Employers quarterly unemployment tax statement; or

2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan;

(c) A copy of the employer's application or renewal information for coverage to the insurer;

(d) Employee ICARE Program high-cost condition certification, if applicable; and

(e) Any additional attachments, if applicable.

(3) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(3).

(4) "Eligible employer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2).

(5) "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(6) "Full time employee" means an employee who works at least twenty-five (25) hours per week.

1 (7) "Full time equivalent" means a number that equals the total hours worked per week by part
2 time employees divided by twenty-five (25).

3 (8) "Health care incentive payment" means a payment as established in 2006 Ky. Acts ch. 252,
4 Part XXIII, secs. 2(3) and 4(1).

5 (9)~~(7)~~ "Health benefit plan" is defined in KRS 304.17A-005(22).

6 (10)~~(8)~~ "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small
7 Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

8 (11)~~(9)~~ "ICARE Program high-cost condition" means a high-cost condition as:

9 (a) Defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(5); and

10 (b) Established in 806 KAR 17:540.

11 (12)~~(10)~~ "ICARE Program participating employer" means an eligible employer who is enrolled
12 in the ICARE Program.

13 (13)~~(11)~~ "ICARE Program participating insurer" is defined in 2006 Ky. Acts ch. 252, Part
14 XXIII, sec. 1(6).

15 (14) ~~(12)~~ "ICARE Program year" means a one (1) year period of time beginning on an eligible
16 employer's enrollment date in the ICARE Program.

17 (15) ~~(13)~~ "Insurer" is defined in KRS 304.17A-005(27).

18 (16)~~(14)~~ "Office" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(7) and KRS 304.1-
19 050(2).

20 (17)~~(15)~~ "Owner" means an individual with an ownership interest in the business.

21 ~~(16)~~ "Qualified health benefit plan" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(8).

22 Section 2. Employer Eligibility. (1) To determine the number of employees of an employer
23 pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2), the office shall consider:

1 (a) Full time employees; and

2 (b) Full time equivalents rounded to the nearest whole number.~~[-Individuals currently~~
3 ~~employed by the employer; and~~

4 ~~(b) Individuals with an ownership interest.]~~

5 (2) The average annual salary of the employer group shall not exceed 300% of the most current
6 federal poverty level for a family of three (3) ~~[an individual]~~. To determine the average annual
7 salary of the employer group pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(4), the office
8 shall:

9 (a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the
10 salary of any employee:

11 1. With an ownership interest in the business;

12 2. Who is a Medicare-eligible employee;

13 3. Who has attained age sixty-five (65); or

14 4. Who does not meet eligibility requirements for participation in the employer-
15 sponsored health benefit plan established by the employer and insurer; and

16 (b) Divide the sum calculated in paragraph (a) of this subsection by the total number of
17 employees whose salaries were used in the calculation established in paragraph (a) of this
18 subsection.

19 (3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost
20 of qualified health benefit plan coverage for each eligible employee.

21 (4) An eligible employer shall have at least one (1) eligible employee who is not an owner of
22 ~~[without an ownership interest in]~~ the business.

Section 3. Application for Participation in the ICARE Program. (1) An eligible employer who desires to participate in the ICARE Program and:

(a) Who has not provided employer-sponsored health benefit plan coverage to its employees within the previous twelve (12) months, shall submit a complete ICARE Program application within one hundred and twenty (120) ~~[thirty-one (31)]~~ days of receiving notice of approval for coverage under a qualified health benefit plan;

(b) Who currently provides employer-sponsored health benefit plan coverage to its employees under a qualified health benefit plan and has an eligible employee with a diagnosed ICARE high-cost condition, shall submit a complete ICARE Program application at any time; or

(c) Who has been terminated from the ICARE Program for any reason other than material misrepresentation or fraud, shall submit a complete ICARE Program application no earlier than sixty (60) days prior to the anniversary of the employer's previous ICARE Program year.

(2) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of an application for the ICARE Program by:

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications from employees, as identified in the ICARE Program application ~~[from employees]~~; and

2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.

1 Section 4. Application Process. (1) Within sixty (60) days of receiving a complete ICARE
2 Program application, the office shall make a determination of the employer's eligibility for the
3 ICARE Program and provide written or electronic notification to the employer regarding
4 eligibility.

5 (2) Within sixty (60) days of receiving an incomplete ICARE Program application, the office
6 shall provide the employer with a written or electronic notification of:

7 (a) Ineligibility of the employer, if the application includes information which makes an
8 employer ineligible for the ICARE Program; or

9 (b) Any[What] information that is missing or incomplete.

10 (3) If an employer receives notification of ineligibility for the ICARE Program, the employer
11 may submit within thirty (30) days from the date of the notification a written request to the office
12 for reconsideration in accordance with Section 8 of this administrative regulation.

13 (4) Upon approval of ICARE Program eligibility by the office under a program eligibility
14 category as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3), an eligible employer
15 shall not be allowed to reapply to the ICARE Program under a different program eligibility
16 category.

17 Section 5. Changes in Application Information. An ICARE Program participating employer shall
18 provide written notification of any change in ICARE Program application information to the
19 office within thirty (30) days of the date of the change.

20 Section 6. Renewal of ICARE Program Participation. (1) At least sixty (60) days prior to the
21 ICARE Program year renewal date, the office shall send a renewal notification to an ICARE
22 Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the office:

(a) A written request for renewal of ICARE Program participation; and

(b) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8.

(3) Within thirty (30) days of receiving a request for renewal, the office shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 7. Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) The office determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8:

1. Upon completion of an annual review for the ICARE Program year reviewed;

or

2. Upon review of a request for renewal of ICARE Program Participation;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(5);

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the ICARE Program application [~~to the ICARE Program~~];

(d) The employer requests termination from the ICARE Program;

1 (e) The employer ceases business operations in Kentucky; or

2 (f) The employer fails to cooperate in an annual review as described in Section 10 of the
3 administrative regulation.

4 (2) Prior to terminating an ICARE Program participating employer, the office shall provide
5 written notification to the employer, which shall include:

6 (a) The reason for termination as identified in subsection (1) of this section;

7 (b) The termination date, which shall be:

8 1. If terminated for fraud or misrepresentation, the date of the written notification;

9 or

10 2. If terminated for a reason other than fraud or misrepresentation, no less than
11 thirty (30) days from the date of the written notification; and

12 (c) Instructions for filing an appeal if dissatisfied with the termination.

13 Section 8. Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving
14 notification of a determination of ineligibility pursuant to Section 4 or 6 of this administrative
15 regulation or termination by the office pursuant to Section 7 of this administrative regulation, an
16 employer may request a reconsideration of the determination of ineligibility or termination in
17 writing and shall provide the basis for reconsideration, including any new relevant information.

18 (2) The office shall provide written notification of its determination to the employer within sixty
19 (60) days of receipt of a request for reconsideration from an employer.

20 (3) Within sixty (60) days of receiving the office's determination on reconsideration, the
21 employer may appeal by filing a written application for an administrative hearing in accordance
22 with KRS 304.2-310.

Section 9. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17:555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The office shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1) for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the office based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination for months remaining after the termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the office all health care incentive payments received by the employer for the period of ineligibility determined by the office.

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that

1 is equal to the health care incentive payment that the employer would have received at the time
2 of renewal in accordance with 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1).

3 Section 10. Annual Review. The office may make or cause to be made an annual review of the
4 books and records of an ICARE Program participating employer, insurer, or agent to ensure
5 compliance with:

6 (1) 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8, 806 KAR 17:540, 806 KAR 17:555 and
7 this administrative regulation; and

8 (2) The representations made by the employer on its application for participation in the ICARE
9 Program.

10 Section 11. Response to Office Inquiry. If an employer receives an inquiry from the office
11 relating to the eligible employer's participation or application in the ICARE Program, the eligible
12 employer shall respond within fifteen (15) business days.

13 Section 12. Effective Date. The requirements, implementation, and enforcement of this
14 emergency regulation shall begin on July 1, 2007.

15 Section 13. Incorporation by Reference. (1) "ICARE-APP-1", (6/2007)[(12/2006)], is
16 incorporated by reference.

17 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at
18 the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday
19 through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office Web site at
20 <http://doi.ppr.ky.gov/kentucky/>.

READ AND APPROVED:

Julie Mix McPeak, Executive Director
Kentucky Office of Insurance

Date

Tim LeDonne, Commissioner
Department for Public Protection

Date

Lloyd R. Cress, Deputy Secretary
Environmental and Public Protection Cabinet
For Teresa J. Hill, Secretary
Environmental and Public Protection Cabinet

Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation 806 KAR 17:545E, ICARE Program employer eligibility, application process, and requirements.

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application appeals process, annual review, health care incentive payment procedures, and eligibility criteria for employers wishing to participate in the Insurance Coverage Affordability and Relief to Small Employers (ICARE) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 2006 Ky. Acts ch. 252, Part XXIII secs. 1-8 in creating administrative regulations to further clarify and establish the various processes for participation in the ICARE Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office of Insurance to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing eligibility requirements, ICARE Program application, enrollment and appeal processes, annual review and payment of health care incentives.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides definitions for “full time employee” and “full time equivalents”, expands the timeframe for a previously uninsured group to submit an application, changes the family size for consideration in an employer groups salary calculation, makes conforming or technical changes to the regulation required under KRS Chapter 13A, and provides a future effective date for requirements, implementation, and enforcement.

(b) The necessity of the amendment to this administrative regulation: In order to limit exposure to the high cost of health care in this state, protect human health by offering more affordable health insurance coverage for employees of small group employers in Kentucky and remove some of the barriers to ICARE Program eligibility, it is necessary to promulgate this regulation and clarify requirements for enrollment in this program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office of Insurance to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program.” This amendment to the administrative regulation and material incorporated by reference is conforming with authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation and material incorporated by reference will assist in the effective administration of the statutes by clarifying the eligibility requirements, ICARE Program application, and salary calculation process pursuant to recommendations received during the initial months of ICARE Program operation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 40,716 Kentucky licensed health insurance agents who assist employers of small business to obtain health insurance coverage. Approximately 4,000 small business employers with 20,000 employees may be eligible for the ICARE Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Agents assisting employers will be required to complete and submit the incorporated ICARE Program application and other required documentation within the prescribed timeframes. Employees with high-cost conditions will be required to complete the ICARE Program High-Cost Condition Certification, which is part of the ICARE Program application. Additionally, an ICARE Program participating employer will be required to notify the Office of Insurance of any changes in the employer’s application during the ICARE Program year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated that costs associated with submitting an ICARE Program application and notifying the Office of Insurance of any changes will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agents who comply with the requirements of this administrative regulation will be able to assist small group employers who are eligible for obtaining health care incentive payments that may defray some of the cost of health insurance. Employers of small groups that meet and comply with the requirements of this administrative regulation may participate in the ICARE Program and receive a monthly health care incentive payment for each eligible employee.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Costs of implementing this administrative regulation on an initial basis are projected to be \$145,670 for the Office of Insurance. Twenty million dollars have been allocated from the General Fund for the ICARE Program.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are projected to be \$161,550 for the Office of Insurance. Twenty million dollars have been allocated from the general fund for the ICARE Program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Office of Insurance. Twenty million dollars have been allocated from the general fund to administer the ICARE Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering is not applied because this administrative regulation applies equally to all employers who wish to qualify for the ICARE Program. Furthermore, all Kentucky licensed health insurance agents who assist employers with the ICARE Program application will be required to comply with this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No.806 KAR 17:545E Contact Person: Melea Rivera

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Kentucky Office of Insurance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish “guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program.”

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue for state government will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue for state government will be generated as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year?

Costs of implementing this administrative regulation, which establishes the application and other components of the ICARE Program, on an initial basis (fiscal year 2006-07) are estimated to be \$145,670 for the Office of Insurance. An appropriation of 20 million dollars from the General Fund will fund the program for two years.

(d) How much will it cost to administer this program for subsequent years?

Costs of implementing this administrative regulation, which establishes the application and other components of the ICARE Program, are estimated to be \$161,550 for the Office of Insurance for fiscal year 2007-08. An appropriation of 20 million dollars from the General Fund will fund the program for two years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

DETAILED SUMMARY of CHANGES TO INCORPORATED MATERIAL

806 KAR 17:545 ICARE Program employer eligibility, application process, and requirements.
Contact person: Melea Rivera

(1) 806 KAR 17:545 incorporates a revised, (06/2007) edition of "ICARE-APP-1", which is the application form that small business employers and Kentucky licensed agents will use to apply for participation in the ICARE Program. This form was amended as follows:

- (a) All pages were amended to reflect the new edition date of (06/2007);
- (b) Pages one (1) through page four (4) were deleted from the document and the subsequent pages were renumbered
- (c) Page five (5) was amended to provide additional instructions and contact information for the ICARE Program;
- (d) Page six (6) was amended to specify that the average annual gross salary of an employer group shall not exceed 300% of the Federal Poverty Level for a family of three (3);
- (e) Page eight (8) was amended to delete the reference to additional sheets, add a column for the average hours an employee works per week, and adjust the formatting of the page; and
- (f) An additional page, after page eight (8) was added to provide additional space for employers to report employee information.

(2) The total number of pages that the Office of Insurance has incorporated by reference is six (6).